



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140611492-5308-01]

RIN 0648-BE30

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Regulatory Amendment 20

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Regulatory Amendment 20 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) (Regulatory Amendment 20), as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this proposed rule would revise the snowy grouper annual catch limits (ACLs), commercial trip limit, and recreational fishing season. The purpose of this rule is to help achieve optimum yield (OY) and prevent

overfishing of snowy grouper while enhancing socio-economic opportunities within the snapper-grouper fishery in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2015-0003" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0003, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will

generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the regulatory amendment, which includes an environmental assessment and an initial regulatory flexibility analysis (IRFA), may be obtained from the Southeast Regional Office Web Site at http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2015/reg_am20/index.html.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727-824-5305, or e-mail: nikhil.mehta@noaa.gov.

SUPPLEMENTARY INFORMATION: Snowy grouper is in the snapper-grouper fishery of the South Atlantic and is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The Magnuson-Stevens Act requires NMFS and regional

fishery management councils to achieve on a continuing basis the OY from federally-managed fish stocks. This mandate is intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Management Measures Contained in this Proposed Rule

This proposed rule would revise the snowy grouper ACLs for both the commercial and recreational sectors, revise the commercial trip limits, and revise the recreational fishing season. All weights described in the preamble of this proposed rule are in gutted weight.

Snowy Grouper Commercial and Recreational ACLs

In 2013, a standard stock assessment for snowy grouper was conducted using the Southeast Data, Assessment, and Review (SEDAR) process (SEDAR 36). SEDAR 36 indicates the snowy grouper stock is no longer undergoing overfishing, remains overfished, and is rebuilding.

Snowy grouper is in a rebuilding plan and catch levels are currently being held constant as the stock rebuilds. While the amendment states that it is changing the rebuilding strategy, the effect of the action is to adopt

the acceptable biological catch (ABC) chosen by the Council as recommended by the Council's Scientific and Statistical Committee (SSC) based upon the stock assessment. The Council's SSC recommended an ABC equal to the yield at 75 percent of the fishing mortality at maximum sustainable yield (F_{MSY}), which would allow ABC to increase as the stock rebuilds.

The current ABC is 87,254 lb (39,578 kg), which equals the total allowable catch specified by the rebuilding strategy in Amendment 15A to the FMP. As described in Regulatory Amendment 20, the ABC would increase to 139,098 lb (63,094 kg) in 2015; 151,518 lb (68,727 kg) in 2016; 163,109 lb (73,985 kg) in 2017; 173,873 lb (78,867 kg) in 2018; and 185,464 lb (84,125 kg) in 2019 and subsequent fishing years.

SEDAR 36 updated the historical landings data for snowy grouper from the Marine Recreational Fisheries Statistical Survey (MRFSS) to the Marine Recreational Information Program (MRIP). Additionally, recreational landings from Monroe County, Florida, which encompasses the islands of the Florida Keys, were included in the SEDAR 36 stock assessment. The recreational landings data from Monroe County were not included in the first stock

assessment conducted for snowy grouper in 2004 (SEDAR 4) because it was not possible at that time to separate out the data from Monroe County from the landings data for the rest of the west coast of Florida. However, in 2013, a method was developed for extracting and separating the recreational landings from Monroe County from the rest of the west coast of Florida and therefore, the Monroe County recreational data were included in SEDAR 36. When applying the existing allocation formula for snowy grouper to the change in landings from the SEDAR 36 assessment, a shift results in the sector ACLs from 95 percent commercial and 5 percent recreational to 83 percent commercial and 17 percent recreational.

The proposed rule would increase the ACLs for snowy grouper based on the ABC chosen by the Council, as recommended by their SSC based on the results of SEDAR 36. The current snowy grouper commercial ACL is 82,900 lb (37,603 kg). This proposed rule would revise the commercial ACL to 115,451 lb (52,368 kg) in 2015; 125,760 lb (57,044 kg) in 2016; 135,380 lb (61,407 kg) in 2017; 144,315 lb (65,460 kg) in 2018; and 153,935 lb (69,824 kg) in 2019, and subsequent fishing years. The current snowy grouper recreational ACL is 523 fish. This proposed rule would

revise the snowy grouper recreational ACL to 4,152 fish in 2015; 4,483 fish in 2016; 4,819 fish in 2017, 4,983 fish in 2018; and 5,315 fish in 2019, and subsequent fishing years.

Snowy Grouper Commercial Trip Limit

This proposed rule would revise the snowy grouper commercial trip limit from the current 100 lb (45 kg) to 200 lb (91 kg). With an increased trip limit, the expected length of the fishing season may decrease. However, the Council determined that since the commercial ACL would be increasing yearly from 2015 to 2019, a relatively small increase in the commercial trip limit to 200 lb (91 kg) would help to maintain a longer fishing season when combined with the commercial ACL increase. Furthermore, because the fishing year for snowy grouper begins on January 1, the Council felt that a higher trip limit for snowy grouper at the beginning of the year could enhance profits for commercial snapper-grouper fishermen because shallow-water grouper species are closed during January-April, leaving snowy grouper as one of few options for purchase by dealers and fish houses. Additionally, with a May harvest opening for many snapper-grouper species, other fish would be available to target if snowy grouper closes in the summer.

Snowy Grouper Recreational Fishing Season

The current snowy grouper fishing season is year-round with a recreational bag limit of one snowy grouper per vessel per day. This proposed rule would revise the recreational fishing season to one snowy grouper per vessel per day from May through August, with no retention of snowy grouper during the rest of the year. Snowy grouper recreational landings exceeded the recreational ACL by approximately 400 percent in both 2012 and 2013, and as a result of the accountability measures, the recreational sector closed on May 31 in 2013, and on June 7 in 2014. The Council determined that reducing the current year-round recreational fishing season to a 4-month season would help minimize the risk of exceeding the recreational ACL. The months of May through August are when recreational fishermen throughout the South Atlantic generally have equal access to the resource due to good weather conditions. The fishing season dates and bag limit for the snowy grouper recreational sector would match those proposed for a co-occurring species, blueline tilefish, through Amendment 32 to the FMP. Thus, this approach could help reduce discard mortality for snowy grouper, which can be targeted along with blueline tilefish, another co-

occurring deep-water species. The Council determined that similar recreational management measures and fishing seasons for snowy grouper and blueline tilefish would be beneficial to both fish stocks as they are caught at the same depths and have similar high release mortality rates.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed rule is consistent with Regulatory Amendment 20, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this rule, if adopted, would have on small entities. A description of the action, why it is being considered, the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this rule. Accordingly, this rule does not implicate the Paperwork Reduction Act.

This rule, if implemented, would be expected to directly affect federally permitted commercial fishers harvesting for snowy grouper in the South Atlantic. The Small Business Administration established size criteria for all major industry sectors in the U.S., including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$20.5 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide.

Charter vessels and headboats (for-hire vessels) sell fishing services, which include the harvest of any species considered in this proposed rule, to recreational anglers. These vessels provide a platform for the opportunity to fish and not a guarantee to catch or harvest any species,

though expectations of successful fishing, however defined, likely factor into the decision to purchase these services. Changing the allowable harvest of a species, including a fishery closure, only defines what species may be kept and does not explicitly prevent the continued offer of for-hire fishing services. In response to a change in the allowable harvest of a species, including a zero-fish possession limit or fishery closure, catch and release fishing for a target species could continue, as could fishing for other species. Because the proposed changes to management measures for species considered in this proposed rule would not directly alter the services sold by these vessels, this proposed rule would not directly apply to or regulate their operations. For-hire vessels would continue to be able to offer their primary product, which is an attempt to "put anglers on fish," provide the opportunity for anglers to catch whatever their skills enable them to catch, and keep those fish that they desire to keep and are legal to keep. Any changes in demand for these fishing services, and associated economic affects as a result of changing an ACL or establishing fishery closures, would be a consequence of behavioral change by anglers, secondary to any direct effect on anglers, and, therefore, an indirect effect of

the proposed regulatory action. Because the effects on for-hire vessels would be indirect, they fall outside the scope of the Regulatory Flexibility Analysis (RFA). Recreational anglers, who may be directly affected by the changes in this proposed rule, are not small entities under the RFA.

NMFS has not identified any other small entities that would be expected to be directly affected by this proposed rule.

The snapper-grouper fishery is a multi-species fishery and vessels generally land many species on the same trips. From 2009 through 2013, an annual average of 138 vessels with valid Federal permits to operate in the commercial sector of the snapper-grouper fishery landed at least 1 lb (0.45 kg) of snowy grouper. Each vessel generated annual average dockside revenues of approximately \$78,000 (2013 dollars), of which \$2,000 were from snowy grouper, \$21,000 from other species jointly landed with snowy grouper, and \$55,000 from other species on trips without snowy grouper. Vessels that caught and landed snowy grouper may also operate in other fisheries outside the snapper-grouper fishery, the revenues of which are not known and are not reflected in these totals. Based on revenue information, all commercial vessels directly affected by the rule may be

considered small entities.

Because all entities expected to be affected by this rule are small entities, NMFS has determined that this rule would affect a substantial number of small entities. Moreover, the issue of disproportionate effects on small versus large entities does not arise in the present case.

The effect of the action to modify the rebuilding strategy for snowy grouper is to adopt the ABC chosen by the Council, as recommended by their SSC based upon the recent stock assessment. Modifying the rebuilding strategy for snowy grouper would have no direct economic effects on small entities, because it would not alter the current use or access to the snowy grouper resource. NMFS notes that the ABC resulting from the modification of the rebuilding strategy would be higher than the status quo ABC for snowy grouper.

Setting the snowy grouper ACL equal to ABC implies that the ACL would increase as a result of the proposed ABC increase. The method for allocating the ACL between the commercial and recreational sectors would remain the same. The change in the commercial and recreational percentage allocation results from the use of the updated landings of snowy grouper from SEDAR 36. Relative to the 2014 ACL, the

proposed commercial ACLs will increase by 39 percent in 2015 and continue to increase annually through 2019 to a point where the proposed ACL in 2019 will be 86 percent greater than it was in 2014. Compared to the 2014 ACL, the proposed recreational ACL will increase by 442 percent in 2015 and continue to increase annually through 2019 to a point where the proposed ACL in 2019 will be 623 percent greater than it was in 2014. In principle, the increases in the snowy grouper sector ACLs would be expected to result in revenue and profit increases to commercial vessels. The actual results would partly depend on the relationship to the management measures proposed for the commercial sector, as discussed below. As noted, for-hire vessels would only be indirectly affected by this action.

Increasing the snowy grouper commercial trip limit from 100 lb (45 kg), to 200 lb (90 kg), would tend to increase the profit per trip of commercial vessels. This higher trip limit would complement the proposed commercial ACL increase in potentially increasing the annual profits of commercial vessels. Given the proposed ACL increase, the commercial fishing season is expected to extend from January 1 through July 19 under the higher trip limit, or January 1 through December 26 under the status quo (No

Action) trip limit. Therefore, the proposed commercial trip limit increase would result in a higher profit per trip but shorter commercial fishing season; whereas the status quo trip limit would be associated with lower profit per trip but a longer fishing season. Which of these two scenarios would result in higher annual profit for commercial vessels cannot be ascertained. What is less uncertain, however, is that the proposed commercial ACL increase would result in higher annual revenues and profits. As noted, the commercial fishing season is projected to last until July 19 under the proposed trip limit and ACL increases. Without the ACL increase, the commercial fishing season is projected to last until June 6 under the proposed trip limit increase. Thus, the commercial ACL increase would allow for about 6 extra weeks of commercial fishing for snowy grouper under the proposed trip limit increase. Given a longer fishing season and higher profit per trip, revenues and profits of commercial vessels that target snowy grouper are likely to increase.

The following discussion analyzes the alternatives that were not selected as preferred by the Council. Only actions that would have direct economic effects on small entities merit inclusion in the following discussion.

Three alternatives, including the preferred alternative (as fully described in the preamble), were considered for adjusting the ACLs. The first alternative, the no action alternative, would maintain the current (lower) commercial and recreational ACLs. This alternative would maintain the same economic benefits for commercial vessels but at levels lower than those afforded by the preferred alternative. The second alternative, which has three sub-alternatives, would set ACLs as some percentage of the ABC. The three sub-alternatives are setting the ACL at 95 percent, 90 percent, and 85 percent of the ABC. All three sub-alternatives would have lower positive effects on the profits of commercial vessels than the preferred alternative.

Five alternatives, including the preferred alternative (as fully described in the preamble), were considered for modifying the management measures for the snowy grouper commercial sector. The first alternative, the no action alternative, would maintain the commercial trip limit of 100 lb (45 kg). Compared to the preferred alternative, the no action alternative would have a lower profit per trip but would also leave the commercial fishing season open almost year-round. Which of these two alternatives would

result in higher annual vessel profits for commercial vessels cannot be ascertained. NMFS notes that, if the trip limit is maintained at 100 lb (45 kg), commercial vessels may not take full advantage of the proposed ACL that would annually increase until at least 2019.

The second alternative would split the snowy grouper commercial ACL into two quotas: 50 percent to the first period (January 1-April 30) and 50 percent to the second period (May 1-December 31). Any remaining commercial quota from the first period would carry over into the second period; any remaining commercial quota from the second period would not carry over into the next fishing year. The following three sub-alternatives on trip limits would apply to each period: 100 lb (45 kg), 150 lb (47.5 kg), or 200 lb (90 kg). Given the proposed commercial ACL increase, the first period would likely remain open under any of the alternative trip limits, but the second period would close early with the highest trip limit resulting in the shortest fishing season. This alternative, with the trip limit of 200 lb (90 kg), would have the same effects on commercial vessel profits as the preferred alternative, because both alternatives would have the same trip limits and the same fishing season length. At lower trip limits, this

alternative would allow a longer fishing season but also lower profit per trip than the preferred alternative. It cannot be determined if this alternative, with lower trip limits and a longer fishing season, would result in higher annual profits than the preferred alternative. In an effort to address the accessibility to the snowy grouper resource, the Council considered implementing a commercial split season that would essentially spread out effort over time and allow for more equitable access to snowy grouper throughout the Council's area of jurisdiction. The Council decided to retain the current commercial fishing year as the calendar year because snowy grouper are an important commercial species in the early part of the calendar year, when shallow-water groupers are closed to commercial harvest. In addition, snowy grouper earn higher prices during the early months of the year.

The third alternative would split the snowy grouper commercial ACL into two quotas: 40 percent to the first period (January 1-April 30) and 60 percent to the second period (May 1-December 31). Any remaining commercial quota from the first period would carry over into the second period; any remaining commercial quota from the second period would not carry over into the next fishing year.

This alternative would maintain the current commercial trip limit of 100 lb (45 kg), for the first period and establish one of the following trip limits for the second period: 100 lb (45 kg), 150 lb (47.5 kg), 200 lb (90 kg), 250 lb (112.5 kg), or 300 lb (135 kg). Under this alternative and given the proposed ACL increases, commercial fishing would likely remain open throughout the first period but would close early in the second period, with the highest trip limit resulting in the shortest fishing season. As with the second alternative, this alternative, when combined with lower trip limits would provide longer fishing seasons but lower profit per trip than the preferred alternative. Similarly, this alternative, when combined with higher trip limits, would allow for a higher profit per trip but result in shorter fishing seasons. It cannot be determined if this alternative, with either lower or higher trip limits, would result in greater annual profits than the preferred alternative. Similar to the second alternative, the Council considered a split season to address the accessibility to the resource. For similar reasons mentioned above, this third alternative was not selected as the preferred alternative by the Council.

The fourth alternative is similar to the preferred

alternative but would establish a trip limit of either 300 lb (135 kg), or 150 lb (47.5 kg). This alternative would result in a longer fishing season but a lower profit per trip under a trip limit of 150 lb (47.5 kg), or a shorter fishing season and a higher profit per trip under a trip limit of 300 lb (135 kg), than the preferred alternative. The differential impacts on the annual profits of commercial vessels between this alternative and the preferred alternative cannot be determined. However, the preferred alternative appears to provide a better balance between season length and profit per trip than this alternative with trip limits of either 150 lb (47.5 kg), or 300 lb (135 kg).

The fifth alternative would modify the snowy grouper commercial trip limit to 150 lb (47.5 kg), all year or until the commercial ACL is met or projected to be met, except for the period of May through August from Florida's Brevard/Indian River County line northward when the trip limit will be one of the following: 200 lb (90 kg), 250 lb (112.5 kg), or 300 lb (135 kg). This alternative would provide for a lower trip limit than the preferred alternative, except in May through August when an equal or higher trip limit would be allowed in certain areas. This

alternative would likely benefit commercial vessels in areas north of Indian River County, Florida, more than vessels in other areas, at least during the period when vessels in the northern areas are allowed higher trip limits. Whether total profits from all vessels would be higher under this alternative than under the preferred alternative cannot be determined. Although this alternative was not chosen as the preferred alternative, the Council acknowledged that fishermen in North Carolina have historically had limited access to snowy grouper at the beginning of the fishing year due to poor winter weather conditions. However, some milder winters in recent years have benefitted fishermen through some increased access to snowy grouper.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, South Atlantic, Snapper-Grouper, Snowy grouper.

Dated: April 2, 2015.

Eileen Sobeck,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.183, paragraph (b) (8) is added to read as follows:

§ 622.183 Area and seasonal closures.

* * * * *

(b) * * *

(8) *Snowy grouper recreational sector closure.* The recreational sector for snowy grouper in or from the South Atlantic EEZ is closed from January 1 through April 30, and September 1 through December 31, each year. During a closure, the bag and possession limit for snowy grouper in or from the South Atlantic EEZ is zero.

3. In § 622.190, the last sentence in paragraph (a) introductory text, and paragraph (a) (1) are revised to read as follows:

§ 622.190 Quotas.

* * * * *

(a) * * * The quotas are in gutted weight, that is eviscerated but otherwise whole, except for the quotas in paragraphs (a)(1), (4), (5), and (6) of this section which are in both gutted weight and round weight.

(1) *Snowy grouper*--(i) For the 2015 fishing year--115,451 lb (52,368 kg), gutted weight; 136,233 lb (61,794 kg), round weight.

(ii) For the 2016 fishing year--125,760 lb (57,044 kg), gutted weight; 148,397 lb (67,312 kg), round weight.

(iii) For the 2017 fishing year--135,380 lb (61,407 kg), gutted weight; 159,749 lb (72,461 kg), round weight.

(iv) For the 2018 fishing year--144,315 lb (65,460 kg), gutted weight; 170,291 lb (77,243 kg), round weight.

(v) For the 2019 and subsequent fishing years--153,935 lb (69,824 kg), gutted weight; 181,644 lb (82,392 kg), round weight.

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4. In § 622.191, the first sentence in paragraph (a)(3) is revised to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(3) *Snowy grouper*. Until the quota specified in § 622.190(a)(1) is reached--200 lb (91 kg), gutted weight; 236 lb (107 kg), round weight. * * *

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5. In § 622.193, paragraph (b)(2) is revised to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(b) * * *

(2) *Recreational sector*. (i) If recreational landings, as estimated by the SRD, exceed the recreational ACL specified in paragraph (b)(2)(ii) of this section, the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. When NMFS reduces the length of the following recreational fishing season, the following closure provisions apply: the bag and possession limits for snowy grouper in or from the South Atlantic EEZ are zero.

These bag and possession limits also apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(ii) The recreational ACL for snowy grouper is 4,152 fish for 2015; 4,483 fish for 2016; 4,819 fish for 2017, 4,983 fish for 2018; 5,315 fish for 2019 and subsequent fishing years.

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[FR Doc. 2015-08067 Filed: 4/7/2015 08:45 am; Publication Date: 4/8/2015]